

Richard E. Anderson
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 14-32720-sgj13
Barbara Flowers	§	CHAPTER 13
Debtor,	§	
	§	Hearing Date: FEBRUARY 9, 2017
U.S. Bank Trust National Association, As	§	Hearing Time: 1:30 P.M.
Trustee Of The Preston Ridge Partners	§	
Investments II Trust	§	
	§	
Movant,	§	
	§	
Barbara Flowers (Debtor)	§	
Kelvin D. Flowers (Co-Debtor)	§	
Respondents.	§	

MOTION FOR RELIEF FROM AUTOMATIC STAY AS TO
9307 SANDY HOOK CIRCLE, DALLAS, TEXAS 75227
AND WAIVER OF THIRTY (30) DAY REQUIREMENT

NOTICE--RESPONSE REQUIRED

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-l(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT, 1100 COMMERCE

STREET, DALLAS, TEXAS 75242, ROOM 1254, BEFORE CLOSE OF BUSINESS ON FEBRUARY 1, 2017 WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" OF THE STAY

COMES NOW, SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of the Preston Ridge Partners Investments II Trust, who, for its Motion for Relief from Automatic Stay, would show the Court the following:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) and in accordance with Rules 4001& 9014 of the Bankruptcy Rules. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 157, and the Standing Order of Reference in this federal district. This is a core proceeding within the meaning of 28 U.S.C. 157(b)(2)(A), (G), and (O).

2. On June 2, 2014, Debtors filed a petition under Chapter 13 of the U. S. Bankruptcy Code.

3. At the time of filing the Chapter 13 petition, Debtors were indebted to Movant pursuant to a Real Estate Lien Note (the "Note") executed on June 25, 1998, in the original amount of \$38,650.00 and bearing interest at the annual rate of 9.90%. The balance due on the Note is \$49,290.66, good through January 31, 2017. A true and correct copy of the Note is attached as **Exhibit "A"**.

4. The Note is secured by a Deed of Trust ("Deed of Trust"), dated June 25, 1998, against the Debtors' residence located at 9307 Sandy Hook Circle, Dallas Texas 75227, as more specifically described as follows:

BEING LOT EIGHT (8) IN BLOCK 3/6740 OF BURTON TERRACE ADDITION NO. 15, AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS

ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 183, PAGE 1793 OF THE MAP RECORDS OF DALLAS COUNTY, TEXAS.

A true and correct copy of the Deed of Trust is attached as **Exhibit "B"**.

5. The monthly payment on the Note is \$524.90. The Debtors have defaulted under the terms of the Note and Deed of Trust by failing to make the monthly post-petition payment that was due on November 1, 2015, and the months following. As of January 31, 2017, the total post-petition arrearage was \$7,687.30. In accordance with the terms of the Note and Deed of Trust, the Debtors are liable for costs and attorney's fees incurred by Movant in connection with this Motion. A true and correct copy of the loan history and other payment information is attached hereto as **Exhibit "C"**.

6. Since the Debtors have failed to make the monthly post-petition payment on the Note, Movant is entitled to have the stay terminated so that it may proceed to foreclose in accordance with its Deed of Trust. In addition, there is no equity in the property and the Debtors have failed to provide adequate protection to the Movant. Consequently, Movant lacks adequate protection of its interest in the Property. Movant therefore seeks relief from the automatic stay pursuant to 11 USC Section 362(d).

7. Movant has no remedy available to it other than to seeks relief from the automatic stay.

8. Since there is a default under the Note, Movant is entitled to have the stay terminated so that it may proceed to foreclose in accordance with its Deed of Trust and Texas law and to obtain possession. Movant specifically requests permission from this Court to communicate with Debtors and Debtors' counsel to the extent necessary to comply with applicable non-bankruptcy law.

9. Movant has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees for which it is entitled to reimbursement under the terms of its Note and Deed.

10. For the above and foregoing reasons, Movant asserts a cause exists sufficient to waive the requirement of Bankruptcy Rule 4001(a)(3), therefore allowing Order to be effective upon this Honorable Court's signature.

WHEREFORE, PREMISES CONSIDERED, Movant prays that, upon hearing of this Motion, said automatic stay be terminated as to the claim of Movant, its successors and/or assigns, to seek its statutory and other available remedies; that Movant, its successors and/or assigns, be permitted to obtain possession of the Property to the exclusion of Debtor, alternatively, Movant, its successors and/or assigns, be afforded adequate protection by including, but not limited to, having all payments presently due in this proceeding to Movant being brought current and Movant being reimbursed for its reasonable attorneys' fees and expenses; and that Movant be granted such other and further relief, at law and in equity, as is just.

Respectfully submitted,

ANDERSON VELA, L.L.P.

4920 Westport Drive

The Colony, Texas 75056

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214.276.1546 - Fax

Email: randerson@AndersonVela.com

ATTORNEYS FOR MOVANT

By: /s/ Richard Anderson

RICHARD E. ANDERSON

State Bar No. 01209010

CERTIFICATE OF CONFERENCE

I hereby certify that on January 2, 2017, the undersigned:

_____ contacted Debtors' attorney through the legal assistant and was advised there is no opposition to the Movant's Motion. Debtors are surrendering the property.

 X contacted Debtors' attorney and was advised there is opposition to Movant's Motion.

_____ called Debtors' attorney's office but was unable to reach Debtors' attorney concerning opposition to Movant's Motion. I left a message for Debtors' counsel to return my call, but as of this date, my call has not been returned.

_____ contacted Debtors' attorney who was unable to advise me whether or not there is opposition to Movant's motion. As of this date, I have not been advised as to whether there is opposition to the Motion.

_____ was unable to contact Pro se Debtors as no telephone number was listed on the Court's docket.

/S/ RICHARD E. ANDERSON

Richard E. Anderson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the MOTION FOR RELIEF FROM AUTOMATIC STAY was served on January 16, 2017. The MOTION FOR RELIEF FROM AUTOMATIC STAY was filed electronically. Service was accomplished by the method and to the following as indicated.

By: /s/ Richard Anderson
RICHARD E. ANDERSON
State Bar No. 01209010
4920 Westport Drive
The Colony, Texas 75056
Email: randerson@AndersonVela.com

BY ELECTRONIC NOTICE OR REGULAR FIRST CLASS MAIL, POSTAGE PREPAID:

DEBTOR

Barbara Flowers
9307 Sandy Hook Circle
Dallas, Texas 75227

CO-DEBTOR

Kelvin D. Flowers (Co-Debtor)
9307 Sandy Hook Circle
Dallas, Texas 75227

DEBTORS' ATTORNEY

Christopher Marvin Lee
Lee Law Firm, PLLC ecf@leebankruptcy.com
8701 Bedford Eules Road, Suite 510
Hurst, Texas 76053

TRUSTEE

Thomas Powers
125 E. John Carpenter Frwy., Suite 1100
Irving, Texas 75062-2288

U.S. TRUSTEE

U.S. Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242

CREDITOR ATTORNEY

Sherrel K. Knighton
Linebarger, Goggan, Blair & Sampson, LLP
2777 N. Stemmons Frwy Ste 1000
Dallas, TX 75207

CREDITOR ATTORNEY

Patrick Michael Lynch
c/o Beasley, Hightower & Harris, P.C.
1601 Elm Street, Ste 4350
Dallas, TX 75201

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	§	
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Kelvin D. Flowers (Co-Debtor)	§	
Respondents.	§	

NOTICE OF HEARING

A hearing will be held on the Motion for Relief from Automatic Stay and Co-Debtor Stay filed by U.S. Bank Trust National Association, as Trustee of the Preston Ridge Partners Investments II Trust on February 9, 2017, at 1:30 P.M. at the U.S. Bankruptcy Court located at 1100 Commerce Street, Dallas, TX 75242, 14th Floor, Courtroom #1 – Clerk 1254.

Respectfully submitted,
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The Colony, Texas 75056
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214.276.1546 - Fax
Email: randerson@AndersonVela.com
ATTORNEYS FOR MOVANT

By: /s/ Richard Anderson
RICHARD E. ANDERSON
State Bar No. 01209010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Hearing on the Motion for Relief from Automatic Stay was served on January 16, 2017. The Notice of Hearing on the Motion for Relief from Automatic Stay was filed electronically. Service was accomplished by the method and to the following as indicated.

/S/ RICHARD E. ANDERSON
Richard E. Anderson

BY ELECTRONIC NOTICE OR REGULAR FIRST CLASS MAIL, POSTAGE PREPAID:

DEBTOR

Barbara Flowers
9307 Sandy Hook Circle
Dallas, Texas 75227

CO-DEBTOR

Kelvin D. Flowers (Co-Debtor)
9307 Sandy Hook Circle
Dallas, Texas 75227

DEBTORS' ATTORNEY

Christopher Marvin Lee
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Hurst, Texas 76053

TRUSTEE

Thomas Powers
125 E. John Carpenter Frwy., Suite 1100
Irving, Texas 75062-2288

U.S. TRUSTEE

U.S. Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242

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/s/ Richard E. Anderson
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